

**Letter of Findings Number: 04-20120052P
Negligence Penalties
For Tax Years 2004-10**

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ISSUE

I. Tax Administration–Negligence Penalties.

Authority: IC § 6-2.5-2-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of ten percent negligence penalties.

STATEMENT OF FACTS

Taxpayer is an Indiana business. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for sales tax, use tax, ten percent negligence penalties, and interest for the tax years 2004 through 2010. Taxpayer protests the imposition of negligence penalties. An administrative hearing was conducted via telephone and this Letter of Findings results. Further facts will be presented as required.

I. Tax Administration–Negligence Penalties.

DISCUSSION

The Department issued proposed assessments for sales tax, interest, and the ten percent negligence penalties for each tax year in question. Taxpayer protests the imposition of penalties and requests a waiver of those penalties. Taxpayer states that it was unaware that its activities were taxable transactions and that it had a duty to collect and remit sales tax as a retail merchant, since it was founded as a service provider and there were initially no sales of tangible personal property. Also, Taxpayer points out that this was its first audit. Taxpayer believes that these factors establish grounds for waiver of the ten percent penalties.

IC § 6-2.5-2-1 provides:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state. (Emphasis added).

The Department refers to IC § 6-8.1-10-2.1, which states in relevant part:

If a person:

- (1) fails to file a return for any of the listed taxes;
 - ...
 - (4) fails to timely remit any tax held in trust for the state;
 - ...
- the person is subject to a penalty.

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....
(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2](#)(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Finally, [45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or

failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred deficiencies which the Department determined were due to negligence under [45 IAC 15-11-2](#)(b), and so was subject to penalties under IC § 6-8.1-10-2.1(a)(4). After review of the documentation and analysis provided in the protest process, Taxpayer has affirmatively established that its failure to pay the deficiencies was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c). However, the Department takes this opportunity to inform Taxpayer that it is now aware of its sales tax collection and remittance responsibilities and waiver of penalty is unlikely for any future failures to meet those responsibilities.

FINDING

Taxpayer's protest is sustained.

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